IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 699 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI A.PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR ARPIT A KAPADIA for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PARTHIV B SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner – original accused has prayed for an appropriate writ,

direction and/or order quashing and setting aside the order dated 17.3.2007 passed by the learned JMFC, Vadodara passed below Exh.47 passed in criminal complaint No.1373 of 1999.

2. A criminal complaint No.1373 of 1999 is filed against the petitioner and others in the Court of learned JMFC, Vadodara for the offence under section 138 r.w. section 141 of the Negotiable Instrument Act; 1881. In the said complaint, the witnesses on the side of the prosecution were examined and thereafter the statement of the petitioner under section 313 was recorded in the month of February – 2007 and immediately thereafter the petitioner submitted an application below Exh.47 to examine the witnesses. The petitioner requested the learned trial Court to summon some witnesses referred to in the said application in support of his defence to tender the evidence. Those proposed witnesses are (i) The Branch Manager, State Bank of India, Makarpura Industrial Branch, Baroda, (ii) The Postman Concerned Akota Post Office,

(iii) Handwriting and photographic Bureau, Directorate of Forensic Science and (iv) Transporter concerned. The said application came to be dismissed by the learned trial Court by impugned order dated 17.3.2007. Being aggrieved and dissatisfied with the same, the petitioner has preferred present petition.

3. Shri Arpit Kapadia, learned advocate appearing for the petitioner does not insist for summoning the concerned postman to tender the evidence and therefore, he does not press for the relief to issue summons to the concerned postman as per his original request in Exh.47. That the question which is required to be considered by this Court is with regard to the proposed witnesses at Serial Nos.1, 3 and 4 only. Shri Parthiv Shah, learned advocate appearing for the respondent – original complainant while opposing present petition and relying upon the decision of this Court in case of ***Madhubhai Gandabhai Patel V/s. Joitaram Jividas Patel & Another*** reported in **2005 (3) GLH 535** has submitted that

even the petitioner has not entered into the witness box and only thereafter on leading proper evidence the prayer of the petitioner as per application Exh.47 can be considered. It is submitted that that stage has not come and only on leading proper evidence and making out a case then and then only the prayer of the petitioner to summon the witnesses to tender evidence can be considered.

4. Under the circumstances, it is observed that after leading proper evidence by the petitioner and after petitioner enters into the witness box, it will be open for the petitioner to move an appropriate application to examine the witnesses in support of his defense in light of the evidence which may be led and can request to summon such witnesses. As and when such an application is made after leading proper evidence and after the petitioner enters into the witness box, the same shall be dealt with in accordance with law and on merits without in any way being influenced by the impugned order dated

17.3.2007 and the present order.

5. With these, present petition is disposed of. Direct Service is permitted.

[M.R.Shah, J.]

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